the custody of a federal agent serving a sentence imposed by a federal court. By virtue of a writ of *habeas corpus* he was, with the consent of the Attorney General of the United States, brought before the state court for trial. Ponzi filed a petition for a writ of *habeas corpus* against the Justice of the Superior Court and the federal agent, alleging that he was in federal custody and therefore the state court had no jurisdiction. The petition was denied. *Held*, that the prisoner was lawfully taken into the state court. *Ponzi* v. *Fessenden*, 42 Sup. Ct. Rep. 309.

In the United States the usual controversy over writs of *habeas corpus* concerns the power of one sovereign to deprive another of its prisoner. See T. B. Benson, "Habeas Corpus Jurisdiction of Federal and State Courts," 20 VA. L. REG. 241. The general principle is that the first sovereign to acquire jurisdiction retains it until its purposes are satisfied. *Ableman* v. *Booth*, 21 How. (U. S.) 506. *Cf. Mahon* v. *Justice*, 127 U. S. 700. Exceptions are made if the prisoner is detained for a violation of state laws committed in pursuance of the Constitution, laws, or treaties of the United States. *In re Neagle*, 135 U. S. 1. See 21 HARV. L. REV. 204. *Cf.* 11 HARV. L. REV. 190. In the instant case, the first sovereign has waived its exclusive jurisdiction. The prisoner maintains that he too must consent to the jurisdiction before the second sovereign can try him. This contention cannot be supported. The action in the principal case was in harmony with common practice in both federal and state courts. *In re Andrews*, 236 Fed. 300 (D. Vt.); *United States* v. *Marrin*, 227 Fed. 314 (E. D. Pa.). But if ever doubt existed regarding this point, it is now dispelled.

HOMICIDE — INTENT — ACCIDENTAL KILLING IN ATTEMPTED ROBBERY — EFFECT OF ABANDONMENT OF ATTEMPT. — The prisoner with a confederate entered a store to hold up and rob the proprietor. Her screams brought neighbors to the scene before the robbery was completed. The robbers, putting away their revolvers, fled. They were intercepted and drew their guns to force a passage. The prisoner's gun went off, killing a bystander. The defense was based on the plea that the shooting was accidental. A statute provided that "all murder . . . committed in . . . the attempt to perpetrate . . . robbery shall be deemed murder in the first degree." (1920 PA. STAT. § 7974.) *Held*, conviction of murder in the first degree was proper. *Comm.* v. *Lessner*, 118 Atl. 24 (Pa.).

The early common law held that any killing in an attempt to commit a felony was murder. *Reg.* v. *Lee*, 4 F. & F. 63; 1 Hale P. C. 465. *Cf. Reg.* v. *Serne*, 16 Cox C. C. 311. More recent writers suggest that the sharp line between felony and misdemeanor be abandoned and that the rule should be that accidental homicide shall be murder only when done in the commission of or attempt at any act or crime in its nature dangerous to human life. See WHARTON, HOMICIDE, 3 ed., § 92. But under either view homicide in the course of attempted robbery will be murder at common law, and by the proper construction of the Pennsylvania statute and cognate legislation murder in the first degree. See 1 WHARTON, CRIMINAL LAW, 11 ed., § 510. The homicide must take place in the course of the attempt. *Hoffman* v. *State*, 88 Wis. 166, 59 N. W. 588; *People* v. *Hüter*, 184 N. Y. 237, 77 N. E. 6. The mere abandonment of his purpose by the prisoner cannot screen him unless done voluntarily and not simply to escape detection. *Lewis* v. *State*, 35 Ala. 380. See 1 WHARTON, CRIMINAL LAW, 11 ed., § 226. Similarly it cannot mitigate the homicide if the killing bears the necessary close relation to the robbery. *State* v. *Gray*, 19 Nev. 212, 8 Pac. 456. But this still leaves the question: Was this killing in the course of an attempt? There is no rule by which to determine when action, originally aimed at the perpetration of a crime, ceases

to be an attempt. Each case must be decided on its own facts. In the principal case the court would not have been warranted in reversing the finding of this fact in the court below. *Cf. Bissot* v. *State*, 53 Ind. 408. But *cf. People* v. *Hüter*, *supra*.

INDICTMENT — FINDING — RESUBMISSION. — Though retained by the prosecutor, the acting state attorney had charge of the proceedings in which a grand jury indicted the defendant for murder. On demurrer to a plea in abatement, the court quashed the indictment. Under a competent state attorney, the same grand jury, having heard the same witnesses only, found the same indictment. A demurrer to a plea in abatement was sustained. The defendant was convicted of manslaughter. *Held*, that the judgment be affirmed. *Oglesby* v. *State*, 90 So. 825 (Fla.).

The Florida Constitution guarantees a right to a grand jury in felony cases. See FLA. CONST., ART. I, § 10. Statute and common law determine the content of that right. *English* v. *State*, 31 Fla. 340, 12 So. 689. At common law bias is no ground of objection to a grand juror, who may act on his own or common knowledge. *Regina* v. *Russell*, Car. & M. 247; *Comm.* v. *Woodward*, 157 Mass. 516. See MIKELL, CASES ON CRIMINAL PROCEDURE, 90 n. See also, 4 BLACK. COMM. 300; Sir Frederick Pollock, "The King's Peace in the Middle Ages," 13 HARV. L. REV., 177, 180–181; James B. Thayer, "The Jury and Its Development," 5 HARV. L. REV. 249, 263. *Contra*, *United States* v. *Burr*, Fed. Cas. No. 14,693 (D. Va.). A Florida statute declares the common law rule. See 1920 FLA. REV. GEN. STAT., §§ 5947, 5954. *Peeples* v. *State*, 46 Fla. 101,35 So. 232. At common law, however, private control of a grand jury invalidates its action. *United States* v. *Kilpatrick*, 16 Fed. 765 (W. D. N. C.); *Welch* v. *State*, 68 Miss. 34, 8 So. 673. See Mr. Justice Field, *Charge to Grand Jury*, 2 Saw. 667, 673 (Circ. Ct. D. Cal.). In a doubtful situation this consideration would have great weight. The jury in returning the second indictment cannot have discounted entirely the influences that produced the first. *Cf. State* v. *Osborne*, 61 Ia. 330, 16 N. W. 201; *State* v. *Ivey*, 100 N. C. 539, 5 S. E. 407. Nevertheless, it would seem, under the circumstances, that the court preserved the substantial features of a grand jury indictment. The evidence amply sustained the conviction, and, *a fortiori*, the indictment. No improper conduct on the part of the first attorney was shown aside from his performance without right of the function of a prosecuting attorney. A competent attorney supervised and presumably approved the later proceedings. The lower court seems clearly justified in refusing, in the exercise of its discretion, a new trial.

INJUNCTION — NATURE AND SCOPE OF THE REMEDY — DISCRETION OF THE COURT TO REFUSE RELIEF ON GROUNDS OF CONVENIENCE. — The defendant railroad appealed from a ruling denying its motion for dissolution of an injunction restraining it from appropriating part of a shipper's coal, to keep its trains running during a coal strike. The plaintiff was a coal merchant. The defendant offered to pay him the invoice price of coal at the mines, plus ten per cent, for its appropriation. It was alleged that further appropriations would not be necessary for some months, at least. *Held*, that the appeal be denied. *Mobile & Ohio R. R. Co.* v. *Zimmern*, 89 So. 475, 206 Ala. 37.

For a discussion of the principles involved, see NOTES, *supra*, p. 211.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — DATE OF INCONTESTABILITY CLAUSE. — The insured took out a policy of life insurance with the defendant company. The policy was antedated, in